

9-14-2016

State v. Lemmons Appellant's Brief Dckt. 43720

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	
Plaintiff-Respondent,)	S.Ct. Nos. 43720 and 43721
vs.)	(consolidated)
)	Twin Falls Co. CR-2011-14836
BRYANN KRISTINE LEMMONS,)	and CR-2012-10131
)	
Defendant-Appellant.)	
_____)	

OPENING BRIEF OF APPELLANT

Appeal from the District Court of the Fifth Judicial District of the State of Idaho
In and For the County of Twin Falls

HONORABLE RANDY J. STOKER,
District Judge

Dennis Benjamin
ISBA# 4199
NEVIN, BENJAMIN McKAY
& BARTLETT LLP
303 West Bannock
P.O. Box 2772
Boise, ID 83701
(208) 343-1000
db@nbmlaw.com

Attorneys for Appellant

Lawrence Wasden
ATTORNEY GENERAL
STATE OF IDAHO
Kenneth K. Jorgensen
Deputy Attorney General
Criminal Law Division
P.O. Box 83720
Boise, ID 83720-0010
(208) 334-2400

Attorneys for Respondent

TABLE OF CONTENTS

I.	Table of Authorities	ii
II.	Statement of the Case	1
	A. Nature of the case	1
	B. Procedural History and Statement of Facts.....	1
III.	Issues Presented on Appeal.....	4
IV.	Argument.....	4
	A. The district court has the authority to run the fines in the 2011 case concurrent with one another and to the fines in the 2012 case. The court abused its discretion in not doing so.....	4
	1. Introduction	4
	2. Why relief should be granted	5
V.	Conclusion	7

TABLE OF AUTHORITIES

STATE CASES

<i>Cummings v. Stephens</i> , —Idaho —, —P.3d —, 2016 WL 4734857 (2016)	4, 6
<i>State v. Brandt</i> , 110 Idaho 341, 715 P.2d 1011 (Ct. App. 1986)	5
<i>State v. Calley</i> , 140 Idaho 663, 99 P.3d 616 (2004)	6
<i>State v. Clapper</i> , 143 Idaho 338, 144 P.3d 43 (Ct. App. 2006)	6
<i>State v. Jones</i> , 440 P.2d 371 (Or. 1968)	6
<i>State v. Lawrence</i> , 98 Idaho 399, 565 P.2d 989 (1977), <i>citing</i> , <i>State v. Crouch</i> , 407 P.2d 671 (N.M. 1965)	4, 5, 6
<i>State v. Lemmons</i> , 158 Idaho 971, 354 P.3d 1186 (2015)	1, 2, 3
<i>State v. Monroe</i> , 97 Idaho 457, 546 P.2d 854 (1976)	4

STATE STATUTES

Idaho Code § 37-2732B	4, 5, 6
Idaho Code § 73-116	5
Idaho Code § 18-308	3, 5, 6

II. STATEMENT OF THE CASE

A. *Nature of the Case*

This is an appeal from the sentences imposed after remand by the Supreme Court. *State v. Lemmons*, 158 Idaho 971, 354 P.3d 1186 (2015). The district court abused its discretion when denying the request that the \$10,000 mandatory fine for Count II in Case No. CR-2012-10131 run concurrently with the fine in Count I as well as run concurrently to the two \$10,000 mandatory fines imposed in Case No. CR-2011-10131.

B. *Procedural History and Statement of Facts*

Bryann Kristine Lemmons was charged by information with two counts of trafficking in methamphetamine in Case No. CR-2011-14836. R (41278 and 41279) 123. Count I alleged that she and Sara Beth Haffner delivered 28 grams or more of methamphetamine to Confidential Informant 86 on October 25, 2011. Count II also alleged that she and Sara Beth Haffner delivered 28 grams or more of methamphetamine to Confidential Informant 86, but this time on December 6, 2011. *Id.*

Later she was also charged with two counts of conspiracy to traffic in methamphetamine in Case No. CR-2012-10131. R (41278 and 41279) 619. Count I alleged that she and Sara Beth Haffner conspired on October 25, 2011, to deliver the methamphetamine to Confidential Informant 86. Count II alleged that she and Sara Beth Haffner conspired on December 6, 2011, to deliver methamphetamine to

Confidential Informant 86. *Id.*

The two cases were consolidated for trial and she was found guilty of all four counts. R (41278 and 41279) 380-381. The court, however, granted Ms. Lemmons' motion for a new trial on portions of the two Trafficking charges and on the entirety of the two Conspiracy charges. R (41278 and 41279) 452. The State filed a Notice of Appeal. R (41278 and 41279) 464. The district court then granted Ms. Lemmons' Motion for Reconsideration in part by granting a Judgment of Acquittal on the conspiracy counts. R (41278 and 41279) 533. Ms. Lemmons filed a Notice of Cross-Appeal. R (41278 and 41279) 538. The Supreme Court reversed both the Judgment of Acquittals and the partial grant of the new trial motion, affirmed the convictions, and remanded for sentencing. *State v. Lemmons*, 158 Idaho 971, 977, 354 P.3d 1186, 1192 (2015).

At the sentencing hearing, the State asked the court "to impose a sentence of five years fixed plus seven years indeterminate for a total of 12 years to serve on each count concurrently to one other. We recognize there is a statutory fine in these cases. We are not asking for anything other than what's required by law."

T (Sentencing), p. 13, ln. 8-13. The court then asked if it was the State's position that it must impose a \$10,000 fine per case. The State responded, "That is the way I understand the law, Your Honor." *Id.*, ln. 19-22.

Ms. Lemmons argued that both the terms of incarceration and the fines be run concurrently. She argued:

We understand the seriousness of these crimes as enunciated by the legislature in imposing the mandatory minimum. We submit to the Court, Your Honor, that just because there are mandatory minimums, that that does not mean the Court is deprived of the authority to run these sentences concurrent as well as the fines running concurrent.

Id., p. 14, ln. 6-12.

The court stated that it believed it was required to impose separate fines and those fines could not be run concurrently.

We have a very specific statute in Idaho, which is Idaho Code Section 18-308, which allows for successive or consecutive sentences. I think the rule of thumb is that sentences are deemed concurrent by default unless the Court specifically makes them consecutive. That applies to a prison sentence. I can find nothing in the state of Idaho, by statute or case law either, that deals with the issue of -- we have in this case of mandatory fines; therefore, it is my conclusion that I am required, Ms. Lemmons, to impose the mandatory fines in all of these cases in this case.

Id., p. 20, ln. 11-21. It then imposed four concurrent fifteen-year terms of imprisonment with three years fixed. *Id.*, p. 23, ln. 9-18. The court declined to run the fines concurrently, stating as follows:

I do not see that I have any discretion to impose other than a \$10,000 fine on each count, and I understand there's an argument there, but when the legislature created mandatory sentences in Idaho and specified a minimum fine, I think that that's exactly what it means, and all these counts stand on their own. I have the authority to run concurrent sentences in terms of the underlying penitentiary sentence, but I don't think I do with regard to fines. If I'm wrong, supreme court's going to tell me, and that will be another appeal. So you have a total of \$40,000 of financial obligations owing in this case.

Id., p. 23, ln. 19 - p. 24, ln. 4. The court's written judgments imposed \$40,000 in fines. R 35-36; 86-87.

Timely notices of appeal were filed. R 39; 90. The Supreme Court consolidated the two appeals for all purposes. R 55.

III. ISSUES PRESENTED ON APPEAL

Does the district court have the discretionary authority to run mandatory \$10,000 fines under I.C. § 37-2732B(3) concurrently? If so, did the court here abuse its discretion in declining to do so?

IV. ARGUMENT

A. *The district court has the authority to run the fines in the 2011 case concurrent with one another and to the fines in the 2012 case. The court abused its discretion in not doing so.*

1. Introduction

The decision whether to run multiple sentences concurrently or consecutively is one of discretion. *See, State v. Monroe*, 97 Idaho 457, 457, 546 P.2d 854, 854 (1976) (Imposition of three consecutive fourteen-year sentences was unduly harsh and an abuse of discretion.); *State v. Lawrence*, 98 Idaho 399, 401, 565 P.2d 989, 991 (1977) (Decision to impose consecutive sentences under I.C. § 18-308 discretionary). A discretionary decision will be upheld on appeal only if it appears that the trial court (1) correctly perceived the issue as discretionary, (2) acted within the boundaries of its discretion and consistent with the applicable legal standards, and (3) reached its determination through an exercise of reason. *Cummings v. Stephens*, — Idaho —, — P.3d —, 2016 WL 4734857, at *2 (2016). Here, the court did not recognize it possessed the authority to run the fines all concurrently with one another and thus that portion of the sentence should be vacated and the matter

remanded for resentencing.

2. Why relief should be granted

Idaho Code § 37-2732B(a)(3) states that an offender “shall be . . . fined not less than ten thousand dollars (\$10,000).” Idaho Code § 37-2732B(a)(8) provides that “imposition or execution of sentence shall not be suspended, deferred, or withheld.” Notwithstanding the prohibition on suspended, deferred and withheld sentences, multiple mandatory terms of imprisonment may be run concurrently under I.C. § 18-308. *See, State v. Brandt*, 110 Idaho 341, 345, 715 P.2d 1011, 1015 (Ct. App. 1986). While I.C. § 18-308 permits concurrent terms of imprisonment, there is no statutory authority expressly permitting concurrent fines, particularly mandatory fines. This is where the district court stopped its analysis and concluded it did not have the authority to impose concurrent fines. However, it erred because courts have common law authority to impose concurrent or consecutive sentences (a broader authority than the concurrent terms of imprisonment authorized by I.C. § 18-308) which has not been abrogated by statute.

As stated by our Supreme Court, “[a]t common law the courts had discretionary power to impose a consecutive sentence and permissive legislation was not necessary. . . . In Idaho the common law is the rule of decision in cases not otherwise provided for by statute. I.C. § 73-116.”¹ *State v. Lawrence*, 98 Idaho at

¹ Idaho Code § 73-116 provides that “[t]he common law of England, so far as it is not repugnant to, or inconsistent with, the constitution or laws of the United States, in all cases not provided for in these compiled laws, is the rule of decision in all courts of this state.”

400, 565 P.2d at 990, *citing*, *State v. Crouch*, 407 P.2d 671, 673 (N.M. 1965) (“[T]he common law gave trial courts the discretion to make sentences consecutive or concurrent.”) *and State v. Jones*, 440 P.2d 371, 372 (Or. 1968) (“It is an inherent power of the court to impose sentences, including the choice of concurrent or consecutive terms when the occasion demands it.”); *see also*, *State v. Clapper*, 143 Idaho 338, 341, 144 P.3d 43, 46 (Ct. App. 2006) (“Under the common law, the courts in Idaho have discretionary power to impose cumulative sentences.”); *State v. Calley*, 140 Idaho 663, 665, 99 P.3d 616, 618 (2004) (acknowledging common law authority to impose either concurrent or consecutive sentence.) In fact, “the primary effect of [I.C. § 18-308 is] essentially to reinstate the common law rule[.]” *State v. Lawrence*, 98 Idaho at 401, 565 P.2d at 991.

The common law authority to impose concurrent fines is not diminished by I.C. § 37-2732B(a)(8). While that statute requires the sentencing court to impose a mandatory minimum fine for each conviction, there is nothing in the text prohibiting the court from running multiple fines concurrently. Thus, the sentencing court had the authority at common law to impose either concurrent or consecutive sentences, including any fines imposed, even though the statute prohibited the court from suspending, deferring, or withholding the sentences.

The sentencing court’s decision cannot be upheld because it failed to correctly perceive the issue as discretionary and it did not act consistently with the applicable legal standards. *Cummings v. Stephens*, 2016 WL 4734857, at *2. And as it appears that the court would have imposed concurrent fines had it believed it had

the authority to do so, this Court should vacate the imposition of the fines and remand for further proceedings.

V. CONCLUSION

For the reasons set forth above, Ms. Lemmons respectfully requests that the Court remand both the 2011 case (No. 436720) and the 2012 case (No. 43721) with instructions that the district court exercise its discretion and consider whether to run the fines concurrently.

Respectfully submitted this 14th day of September, 2016.

/s/Dennis Benjamin
Dennis Benjamin
Attorney for Bryann Lemmons

CERTIFICATE OF COMPLIANCE AND SERVICE

The undersigned does hereby certify that the electronic brief submitted is in compliance with all of the requirements set out in I.A.R. 34.1, and that an electronic copy was served on each party at the following email address(es):

Idaho State Attorney General
Criminal Law Division
ecf@ag.idaho.gov

Dated and certified this 14th day of September, 2016.

/s/Dennis Benjamin
Dennis Benjamin